

2010 No. 831

ELECTRONIC COMMUNICATIONS

BROADCASTING

**The Audiovisual Media Services (Product Placement)
Regulations 2010**

<i>Made</i> - - - -	<i>16th March 2010</i>
<i>Laid before Parliament</i>	<i>18th March 2010</i>
<i>Coming into force</i> - -	<i>16th April 2010</i>

These Regulations are made by the Secretary of State, being a Minister designated for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to measures relating to television broadcasting(b) and in relation to information society services(c), in exercise of the powers conferred by section 2(2) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Audiovisual Media Services (Product Placement) Regulations 2010 and come into force on 16th April 2010.

(2) In these Regulations “the 2003 Act” means the Communications Act 2003(d).

Restriction on product placement in television programme services and on-demand programme services

2.—(1) Section 319 of the 2003 Act (OFCOM’s standards code) is amended as follows.

(2) In subsection (2), after paragraph (f) insert—

“(fa)that the product placement requirements referred to in section 321(3A) are met in relation to programmes included in a television programme service (other than advertisements);”

(3) After subsection (8) insert—

“(9) Subsection (2)(fa) applies only in relation to programmes the production of which begins after 19th December 2009.”

3.—(1) Section 321 of the 2003 Act (objectives for advertisements and sponsorship) is amended as follows.

(a) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a).
(b) European Communities (Designation) Order 1997 S.I. 1997/1174.
(c) European Communities (Designation)(No.2) Order 2001 S.I. 2001/2555.
(d) 2003 c.21.

(2) For the heading of the section substitute “Objectives for advertisements, sponsorship and product placement”.

(3) In subsection (1)—

- (a) for “(g)” substitute “(fa)”;
- (b) in paragraph (a), after “programmes” insert “and, in relation to television programme services, general provision governing standards and practice in product placement”;
- (c) omit “and” at the end of paragraph (a);
- (d) after paragraph (b) insert—
 - “; and
 - (c) in relation to television programme services, may include provision prohibiting forms and methods of product placement (including product placement of products, services or trade marks of any description) (whether generally or in particular circumstances).”

(4) After subsection (3) insert—

“(3A) For the purposes of section 319(2)(fa) the product placement requirements are the requirements set out in Schedule 11A.”

(5) In paragraph (a) of subsection (4)—

- (a) for “shall,” substitute—
 - “shall—
 - (i) ”;
- (b) after “sponsorship; and” insert—
 - “(ii) in relation to television programme services, have a general responsibility with respect to methods of product placement; and”.

(6) In subsection (5)—

- (a) omit “and” at the end of paragraph (a);
- (b) after paragraph (b) insert—
 - “; and
 - (c) the forms and methods of product placement that should not be employed in the provision of a television programme service (including the descriptions of products, services or trade marks for which product placement should not be employed).”

(7) In subsection (8), at the end insert “(except in the expression “television programme service”)”.

4.—(1) Section 324 of the 2003 Act (setting and publication of standards) is amended as follows.

(2) In subsections (3)(c) and (4)(a), after “sponsorship” insert “or for product placement”.

(3) After subsection (11) insert—

“(11A) A code (or draft code) contains standards for product placement for the purposes of this section to the extent that it sets standards under section 319 for securing the objective mentioned in paragraph (fa) of subsection (2) of that section.”

5.—(1) Section 325 of the 2003 Act (observance of standards code) is amended as follows.

(2) In subsection (4)—

- (a) in paragraph (a), for “and the sponsorship of programmes” substitute “, the sponsorship of programmes and product placement”;
- (b) in paragraph (b), for “and sponsorship” substitute “, sponsorship and product placement”.

(3) In subsection (5)—

- (a) omit “and” at the end of paragraph (b);

(b) after paragraph (c) insert—

“; and

- (d) in the case of a television programme service, the forms and methods of product placement to be excluded from the service (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).”

6. In section 362 of the 2003 Act (interpretation of Part 3), in subsection (1), after the definition of “OFCOM’s standards code” insert—

““product placement” has the meaning given by paragraph 1 of Schedule 11A;”.

7. In section 368H of the 2003 Act (prohibition of product placement in on-demand programme services), in subsection (16), after the definition of “producer” insert—

““programme” does not include an advertisement;”.

8. In section 368R of the 2003 Act (interpretation of Part 4A), in subsection (1), for the definition of “children’s programme” substitute—

““children’s programme” means a programme made—

- (a) for a television programme service or for an on-demand programme service, and
(b) for viewing primarily by persons under the age of sixteen;”

9. In the 2003 Act, after Schedule 11 insert—

“SCHEDULE 11A

Restrictions on product placement

Introductory

1.—(1) In this Part “product placement”, in relation to a programme included in a television programme service, means the inclusion in the programme of, or of a reference to, a product, service or trade mark, where the inclusion—

- (a) is for a commercial purpose;
(b) is in return for the making of any payment, or the giving of other valuable consideration, to any relevant provider or any person connected with a relevant provider; and
(c) is not prop placement.

(2) “Prop placement”, in relation to such a programme, means the inclusion in the programme of, or of a reference to, a product, service or trade mark where—

- (a) the provision of the product, service or trade mark has no significant value; and
(b) no relevant provider, or person connected with a relevant provider, has received any payment or other valuable consideration in relation to its inclusion in, or the reference to it in, the programme, disregarding the costs saved by including the product, service or trademark, or a reference to it, in the programme.

2. The product placement requirements are—

- (a) that the product placement does not fall within any of paragraphs 3 to 6;
(b) that all of the conditions in paragraph 7 are met; and
(c) that, where paragraph 8 applies, the condition in that paragraph is also met.

Prohibitions of product placement

- 3.—(1) Product placement falls within this paragraph if it is in a children’s programme.
- (2) In sub-paragraph (1) “children’s programme” means a programme made—
- (a) for a television programme service or for an on-demand programme service, and
 - (b) for viewing primarily by persons under the age of sixteen.
4. Product placement falls within this paragraph if it is—
- (a) of cigarettes or other tobacco products;
 - (b) by or on behalf of an undertaking whose principal activity is the manufacture or sale of cigarettes or other tobacco products; or
 - (c) of prescription-only medicines.
5. Product placement of alcoholic drinks falls within this paragraph if—
- (a) it is aimed specifically at persons under the age of eighteen; or
 - (b) it encourages immoderate consumption of such drinks.
- 6.—(1) Product placement falls within this paragraph if it is in a programme to which this paragraph applies and—
- (a) the programme is a religious, consumer affairs or current affairs programme;
 - (b) the product placement is of anything within sub-paragraph (2); or
 - (c) the product placement is otherwise unsuitable.
- (2) The following are within this sub-paragraph—
- (a) electronic or smokeless cigarettes, cigarette lighters, cigarette papers or pipes intended for smoking;
 - (b) medicinal products;
 - (c) alcoholic drinks;
 - (d) infant formulae or follow-on formulae;
 - (e) a food or drink high in fat, salt or sugar;
 - (f) gambling services.
- (3) This paragraph applies to—
- (a) a programme that has been produced or commissioned by the provider of the television programme service in which it is included, or by a person connected with that provider, and that is not a film made for cinema; and
 - (b) a programme that has been produced or commissioned by any other person with a view to its first showing taking place in a television programme service which is provided by a person under the jurisdiction of the United Kingdom for the purposes of the Audiovisual Media Services Directive.

Conditions applying to product placement

- 7.—(1) These are the conditions referred to in paragraph 2(b).
- (2) Condition A is that the programme in which the product, service or trademark, or the reference to it, is included is—
- (a) a film made for cinema;
 - (b) a film or series made for a television programme service or for an on-demand programme service;
 - (c) a sports programme; or
 - (d) a light entertainment programme.

(3) Condition B is that the product placement has not influenced the content or scheduling of the programme in a way that affects the editorial independence of the provider of the television programme service in which the programme is included.

(4) Condition C is that the product placement does not directly encourage the purchase or rental of goods or services, whether by making promotional reference to those goods or services or otherwise.

(5) Condition D is that the programme does not give undue prominence to the products, services or trade marks concerned.

(6) Condition E is that the product placement does not use techniques which exploit the possibility of conveying a message subliminally or surreptitiously.

(7) Condition F is that the way in which the product, service or trade mark, or the reference to it, is included in the programme by way of product placement does not—

- (a) prejudice respect for human dignity;
- (b) promote discrimination based on sex, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation;
- (c) encourage behaviour prejudicial to health or safety;
- (d) encourage behaviour grossly prejudicial to the protection of the environment;
- (e) cause physical or moral detriment to persons under the age of eighteen;
- (f) directly encourage such persons to persuade their parents or others to purchase or rent goods or services;
- (g) exploit the trust of such persons in parents, teachers or others; or
- (h) unreasonably show such persons in dangerous situations.

8.—(1) This paragraph applies where the programme featuring the product placement has been produced or commissioned by the provider of the television programme service in which it is included or by a person connected with that provider.

(2) The condition referred to in paragraph 2(c) is that the television programme service in which the programme is included signals appropriately the fact that product placement is contained in a programme no less frequently than—

- (a) at the start and end of such a programme; and
- (b) in the case of a television programme service which includes advertising breaks within it, at the recommencement of the programme after each such advertising break.

Minor definitions

9. In this Schedule—

“connected” has the same meaning as it has in the Broadcasting Act 1990 by virtue of section 202 of that Act;

“film made for cinema” means a film made with a view to its being shown to the general public first in a cinema;

“follow-on formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“infant formulae” has the meaning given in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC;

“medicinal product” has the meaning given in section 130 of the Medicines Act 1968;

“prescription-only medicine” means a medicinal product of a description or falling within a class specified in an order made under section 58 of the Medicines Act 1968;

“producer”, in relation to a programme, means the person by whom the arrangements necessary for the making of the programme are undertaken;

“programme” does not include an advertisement;

“relevant provider”, in relation to a programme, means—

(a) the provider of the television programme service in which the programme is included; and

(b) the producer of the programme;

“residual value” means any monetary or other economic value in the hands of the relevant provider other than the cost saving of including the product, service or trademark, or a reference to it, in a programme;

“significant value” means a residual value that is more than trivial;

“tobacco product” has the meaning given in section 1 of the Tobacco Advertising and Promotion Act 2002;

“trade mark”, in relation to a business, includes any image (such as a logo) or sound commonly associated with that business or its products or services.”

The Welsh Authority

10.—(1) In section 60(4) of the Broadcasting Act 1990(a) (advertising on S4C), after paragraph (a) (but before “and” at the end of that paragraph) insert—

“(aa) from time to time consult the Secretary of State as to the forms and methods of product placement that should not be employed in the provision of S4C (including the descriptions of products, services or trade marks for which product placement should not be employed);”.

(2) In section 202 of the Broadcasting Act 1990 (general interpretation), in subsection (1), after the definition of “pension scheme” insert—

““product placement” has the meaning given by paragraph 1 of Schedule 11A to the Communications Act 2003;”.

(3) In paragraph 14 of Schedule 12 to the 2003 Act (corresponding obligations of the Welsh Authority)—

(a) omit “and” at the end of paragraph (b);

(b) after paragraph (c) insert—

“; and

(d) the forms and methods of product placement to be excluded from those services (including descriptions of products, services or trade marks product placement of which is to be excluded) (whether generally or in particular circumstances).”

16th March 2010

Ben Bradshaw
Secretary of State for Culture, Media and Sport
Department for Culture, Media and Sport

(a) 1990 c.42.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations relate to the implementation of Directive 2007/65/EC of the European Parliament and of the Council amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities^(a). These Regulations insert new provisions into the Broadcasting Act 1990 (“the 1990 Act”) and into the Communications Act 2003 (“the 2003 Act”).

Regulation 2 inserts paragraph (fa) into section 319(2) of the 2003 Act. That paragraph includes product placement requirements in the standards objectives mentioned in that section.

Regulation 3 inserts provisions into section 321 of the 2003 Act to add product placement to the general provision OFCOM must include in the standards set by them to secure the objectives in section 319(2)(fa). The regulation also inserts provision requiring OFCOM to consult the Secretary of State about the forms and methods of product placement that should not be employed in a television programme service. The Secretary of State is able to give OFCOM a direction in respect of those matters.

Regulation 4 amends section 324 of the 2003 Act so that OFCOM’s duty under that section to consult on the draft code required by that section extends to proposed standards for product placement.

Regulation 5 amends section 325 of the 2003 Act so that the conditions of a licence granted by OFCOM for a television programme service must secure compliance with the requirements of their standards code, or which go beyond that code, so far as it relates to product placement.

Regulation 6 inserts a definition of product placement into the 2003 Act.

Regulation 7 inserts a definition into section 368H of the 2003 Act to make clear that, in that section, “programme” does not include an advertisement.

Regulation 8 substitutes for the definition of “children’s programme” in section 368R of the 2003 Act a definition identical to that contained in paragraph 3 of Schedule 11A to the 2003 Act.

Regulation 9 inserts Schedule 11A into the 2003 Act which contains detailed provision about product placement. Paragraph 1 of that Schedule defines the meaning of “product placement” and “prop placement”. Paragraphs 3 to 6 contain prohibitions which apply to all product placement while paragraph 7 sets out particular conditions. Paragraph 8 imposes signalling requirements for product placement if that paragraph applies. Paragraph 9 sets out minor definitions.

Regulation 10 inserts provisions relating to product placement and the Welsh Authority into the 1990 Act and the 2003 Act.

An impact assessment of the effect that this instrument will have on the costs to business and the voluntary sector is available from the website of the Department for Culture, Media and Sport (www.culture.gov.uk). It is also annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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(a) Directive 2007/65 EC OJ No L 332, 18.12.2007, p.27 amending Directive 89/552/EEC OJ No L 298, 17.10.1989, p.23 as amended by Directive 97/36/EC OJ No L 202, 30.7.1997, p.60.

STATUTORY INSTRUMENTS

2010 No. 831

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The Audiovisual Media Services (Product Placement)
Regulations 2010

£5.50

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